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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. DANIEL FUENTES SANCHEZ, Defendant and Appellant.	H022412 (Monterey County Super. Ct. No. SS002217A)

After waiving his right to a jury trial on the condition that he be sentenced to probation and be given full credit for time served, appellant, Daniel Fuentes Sanchez, was convicted following a court trial of one felony count of possession of cocaine. (Health & Saf. Code, § 11350.) The trial court suspended imposition of sentence and placed appellant on formal probation for a period of three years, under the condition that he serve 121 days in county jail. Appellant was given 121 days credit for time served.

Appellant filed a notice of appeal on December 12, 2000. He contends his waiver of jury trial, which was given in exchange for a promise of a lenient sentence, was involuntary and unconstitutional. He seeks a reversal of his conviction.

We conclude the waiver was valid and affirm the judgment.

FACTUAL BACKGROUND

At the court trial, Sergeant Hart of the Monterey Police Department testified he was on foot patrol duty on September 22, 2000, at 11:00 p.m. He and several other officers encountered a gray, four-door Volvo parked on Bonifacio Street in the City of

Monterey. The car belonged to David Reinhart, who was sitting in the driver's seat. Appellant was sitting in the front passenger seat. No one else was in the car, but later it was established that two other passengers had been seated in the back. A third person was standing outside of the car near the driver's door. The right front and rear passenger doors were open. As Sergeant Hart approached, he saw appellant make a twisting motion with his right hand toward the rear floorboard and drop something. The officer asked appellant to step from the car, performed a pat search with consent and had appellant sit on the curb. He observed some plastic and a white, powdery, flaky residue around the plastic, on the rear floorboard, 8 to 10 inches away from the location where he saw appellant drop something. Believing the substance to be cocaine, Sergeant Hart asked Reinhart if the cocaine was his. Reinhart denied ownership. Hart did not ask any of the other passengers if they owned the cocaine.

David Reinhart testified he saw appellant in a nightclub that evening and asked him if he wanted to go outside and smoke some marijuana. Appellant went with him to his car. When they were getting ready to leave, several officers approached the car. There were four people in the car when the police arrived. Reinhart was driving, appellant was in the front passenger seat and there were two other passengers in the back. A third acquaintance had been walking by the car and had stopped to talk just before the police arrived. The passengers were detained. Sergeant Hart asked Reinhart if the contraband in the back of the car was his. He said it was not, and he had no idea who had put the contraband in the car. He denied that appellant had offered him any cocaine that evening, and he denied that he told Sergeant Hart that appellant had offered him a line of cocaine before they smoked the marijuana.

Monterey police officer Bruce Roberts was called to the scene of the investigation. He collected the sample of cocaine from the rear floorboard of the Volvo. He initially noticed a white, crystalline powder on the floor that was consistent with either cocaine or methamphetamine. He also saw a small piece of a plastic bag that had a white, powdery residue in it. He had difficulty collecting the substance because part of it fell into the nap of the carpet as he attempted to scrape it onto a piece of paper. He did manage to get

enough to use for a field test. The substance covered an area on the carpet about the size of a silver dollar. In his opinion, there was enough on the carpet to constitute a usable amount. He used one-quarter of the portion he collected to do a field test and forwarded the remainder to the crime lab for analysis. He believed the sample he collected amounted to two percent of the entire amount that was on the carpet.

Appellant testified that he went with David Reinhart to smoke some marijuana in Reinhart's car. He was seated in the front passenger seat, Reinhart was the driver and two other people were sitting in the back. The occupants of the car became aware that police officers were watching their vehicle. Appellant got out of the car and walked back toward the officers. They told him to get back in the car, and he did, closing his door as the officers had requested. He claimed he was the first person to exit the car, and that there were still three people in the car when Sergeant Hart asked him to get out of the car. While he and the other passengers were sitting on the curb, the officers were searching the car. Sergeant Hart asked Robert Brown, the passenger who had been sitting behind appellant in the car, if the cocaine was his. Brown replied he had no knowledge of any cocaine. Sergeant Hart then informed appellant he was under arrest for possession of a controlled substance. Appellant denied that he dropped anything onto the rear floorboard of the car and further denied that he was in possession of any cocaine that night. He did not offer a line of cocaine to Reinhart. He admitted smoking marijuana and having a marijuana pipe in his pocket.

A criminalist with the California State Department of Justice tested the sample of powder that was taken from the car. It weighed .01 grams and tested positive for the presence of cocaine.

The trial court found beyond a reasonable doubt that appellant was in possession of cocaine, in violation of Health and Safety Code section 11350.

DISCUSSION

Appellant contends his right to jury trial was impermissibly burdened by the court's guarantee of a grant of probation in exchange for his agreement to a court trial. Under the facts of this case, we find no constitutional infirmity in appellant's waiver of

jury trial. We set forth in detail the trial court's communication with appellant on the subject of his waiver.

Appellant was charged with one felony count of possession of a controlled substance. On the day set for jury trial, the court initially heard two of the prosecutor's motions in limine, the first was a request to admit two prior misdemeanor convictions for giving false information to a peace officer (Pen. Code, § 148.9) and resisting or obstructing a peace officer (Pen. Code, § 148, subd. (a)(1)) to impeach credibility should appellant testify, and the second was to admit a prior felony conviction under Health and Safety Code section 11350 to prove knowledge. The court denied both motions and ordered a recess.

After the recess, appellant's attorney informed the court that appellant wished to waive his right to jury trial and proceed with a court trial. The following discussion took place:

"THE COURT: We'll go back on the record in the cases of People versus Daniel Sanchez. Mr. Sanchez is present, both attorneys are also present. This is the time set for trial, already having conducted the pretrial motions.

"Ms. Mooney [appellant's attorney], it's my understanding that you have a request of the Court.

"MS. MOONEY: Yes, Your Honor. Mr. Sanchez has requested that he be allowed to waive his right to a jury trial with the understanding that if he were convicted after a Court trial his sentence would be no greater than felony probation, credit for time served, immediate sentencing without a report.

"THE COURT: And, Mr. Sanchez, you still want to have your trial but you want to have a judge-only trial I understand; is that correct?

"THE DEFENDANT: Yes, Your Honor.

"THE COURT: If you would like to stand for just a moment. Sir, you understand you have a right to have 12 jurors come in and listen to the evidence and decide if you're guilty or not guilty. It's the Court's understanding that at this time that you wish to waive your right to a jury trial and have a judge-only trial in which I'll listen to the evidence and

decide whether the People have proved their case beyond a reasonable doubt. If the People do prove their case beyond a reasonable doubt, the maximum period of time you would serve would be only, no state prison and you would receive credit for time you served already in county jail and you would receive immediate sentencing at the end of the trial. Understanding your rights and the conditions, do you waive your right to a jury trial at this time?

"THE DEFENDANT: Yes, I do, Your Honor.

"THE COURT: Both attorneys join in that waiver?

"MS. HULSEY: Yes, Your Honor.

"MS. MOONEY: Yes.

"THE COURT: The Court does accept the jury waiver at this time. You can be seated."

The trial proceeded before the court as described above, and appellant was found guilty of possession of cocaine. Appellant waived time for sentencing. The court then asked the prosecutor for her comments and recommendation regarding sentencing. She replied: "Your Honor, I'll submit to the Court based on the agreement that we made. I believe that the defendant should be sentenced to credit for time served. I understand that he has other matters pending in Santa Cruz County." The court then asked appellant's attorney for her comments. Appellant's attorney stated: "I would submit it on the representations that were earlier made that his sentence would involve felony probation, credit for time served."

The trial court also asked appellant if he had any comments before sentence was imposed. Appellant replied that he felt he had made the wrong decision to go forward with a court trial. "I just thought maybe I did the wrong decision by having a Court trial. Maybe I should have went for the jury trial, but I'm found guilty of it and charged with a felony which is enough for the amount of the substance that it was." The court explained that there was more than substantial evidence to support the conclusion that appellant was the person who had possession of the cocaine. Before issuing the sentence, the court finally stated: "I guess we always have doubts as to whether or not we made the right

decision once the decision is made. Your attorney has, in representing you, has made a decision that is minimizing the amount of time that you're going to spend in custody here in Monterey County and also made sure there is no state prison at the outset. So that's what was one of the factors the Court understood was being decided by yourself in determining that a judge-only trial would be appropriate in this particular circumstance."

The trial court then sentenced appellant to felony probation for a period of three years, under certain terms and conditions, including that appellant serve 121 days in county jail. Appellant was given credit for time served in the amount of 121 days. Appellant expressly accepted probation on the stated terms and conditions.

The Sixth Amendment, made applicable to the states by the Fourteenth Amendment to the federal Constitution, guarantees a defendant in a criminal prosecution the fundamental right to a jury trial. Similarly, article I, section 16, of the California Constitution confers upon a defendant the right to a trial by jury. The practice of accepting a defendant's waiver of the right to jury trial, common in both federal and state courts, is constitutional, subject to the restriction that a waiver of jury trial must be knowing, intelligent and voluntary. (*People v. Collins* (2001) 26 Cal.4th 297, 304-305.) A waiver that is "voluntary" is one that is the product of a free and deliberate choice rather than intimidation, coercion, or deception. (*Id*. at p. 305.)

Although a waiver of a fundamental constitutional right is permitted, it is well established that the state may not punish a defendant for the exercise of a constitutional right, or promise leniency to a defendant for refraining from the exercise of that right. (*People v. Collins*, *supra*, 26 Cal.4th at p. 305-306.) For example, in *United States v. Jackson* (1968) 390 U.S. 570, the Supreme Court found unconstitutional a federal statute that prescribed a life imprisonment sentence for kidnapping upon a plea of guilty, but permitted the jury to impose the death sentence upon the defendant's election of a jury trial. The court held the statute impermissibly discouraged the criminal defendant's exercise of his or her constitutional right to jury trial. (*Id*. at pp. 580-583.)

In *People v. Collins*, our state Supreme Court recently discussed the circumstances under which a waiver of jury trial could be considered involuntary. In *Collins*, on the day

set for jury trial, defense counsel informed the trial court that he had discussed the possibility of waiving jury trial with defendant. The court asked defendant if he wished to waive jury trial, and defendant stated he did intend to waive the right. The court then proceeded to advise defendant of his right to jury trial and to explain what he would be giving up, if he chose to go to trial before the court. The defendant indicated he understood his rights and still intended to waive jury trial. When the court asked defendant if he understood that he was not gaining any promises of leniency relative to the waiver, defendant responded in the negative. Defendant informed the court that he was told the waiver of jury trial was some assurance of some type of benefit. The court then told defendant that it had informed defendant's counsel that the waiver could well be tied to a benefit, because by not taking up two weeks of the court's time, there was some effect on the court. The court could not specify the exact nature of the benefit, but that by waiving a jury, the defendant was getting some benefit. The defendant replied he understood and waived his right to jury trial. (*People v. Collins*, *supra*, 26 Cal.4th 297, 302.)

The *Collins* court held the trial court's offer of an unspecified benefit was an improper inducement that rendered the defendant's waiver of his constitutional right to jury trial involuntary. The *Collins* court further noted that it had long been recognized by the United States Supreme Court that "the state may not punish a defendant for the exercise of a constitutional right, or promise leniency to a defendant for refraining from the exercise of that right." (*Id*. at p. 306.) Additionally, the court reasoned "the trial court, upon informing defendant that he would receive a benefit of an unspecified nature in the event he waived his right to trial by jury, secured defendant's response that he understood. The court made these representations and offers to defendant prior to determining that his waiver of the right to jury trial was knowing, intelligent, and voluntary. The form of the trial court's negotiation with defendant presented a '*substantial danger of unintentional coercion*.' [Citation.] [¶] In addition, the objective of the trial court's comments was to obtain defendant's waiver of a fundamental constitutional right that, by itself (when defendant elects to go to trial), is not subject to

negotiation by the court. In effect, the trial court offered to reward defendant for refraining from the exercise of a constitutional right. [Citations.] The circumstance that the trial court did not specify the nature of the benefit by making a promise of a particular mitigation in sentence, or other reward, does not negate the coercive effect of the court's assurances. The inducement offered by the trial court to defendant, to persuade him to waive his fundamental right to a jury trial, violated defendant's right to due process of law. . . ." (*People v. Collins*, *supra*, 26 Cal.4th at p. 309, fn. omitted, italics added.)

However, as noted in *Collins*, benefits that are offered to a defendant by a prosecutor in the course of plea negotiations, in which constitutional rights are relinquished, do not necessarily render the waiver of those constitutional rights involuntary or otherwise unconstitutional. "We do not intend by our holding today to call into question the well-established practice in which the *prosecutor* and the defendant negotiate a plea of guilty or nolo contendere [citation], a practice that obviously involves a relinquishment of the constitutional rights attending a trial, including the right to trial by jury. As the high court has explained in examining the prerogative of the state, through the prosecutor, to offer such a plea: '[N]ot every burden on the exercise of a constitutional right, and not every pressure or encouragement to waive such a right is invalid. Specifically, there is no *per se* rule against encouraging guilty pleas. We have squarely held that a State may encourage a guilty plea by offering substantial benefits in return for the plea,' which may obtain for the defendant ' "the possibility or certainty . . . [not only of] a lesser penalty than the sentence that *could* be imposed after a trial and a verdict of guilty . . ." [citation], but also of a lesser penalty than that *required* to be imposed after a guilty verdict by a jury.' [Citations.]." (*Collins*, *supra*, 26 Cal.4th at p. 309, fn. 4.)

The rationale behind these principles was explained by the United States Supreme Court in *Bordenkircher v. Hayes* (1978) 434 U.S. 357. The defendant in that case was originally indicted for forgery. During plea negotiations, the prosecutor offered defendant a five-year sentence in exchange for defendant pleading guilty to the charges. The prosecutor further informed defendant that if he did not plead guilty, based on

defendant's prior conviction record, the prosecutor would seek re-indictment under the Habitual Criminal Act, which mandated a life sentence upon a conviction under the Act. Defendant refused the plea bargain, was re-indicted and convicted under the Act, and was given a life term in prison. The United States Supreme Court rejected defendant's argument that due process was violated because he was punished for exercising his constitutional right to plead not guilty to criminal charges.

The *Bordenkircher* court explained the guilty plea and plea bargain are important components of the country's criminal justice system and can benefit both the criminal defendant and the state. While it is a violation of due process to punish a criminal defendant for doing what the law plainly allows, in the " 'give-and-take' of plea bargaining, there is no such element of punishment or retaliation so long as the accused is free to accept or reject the prosecution's offer." (*Id*. at p. 363.) The high court recognized that confronting a defendant with the risk of more severe punishment could have a discouraging effect on the assertion of the defendant's trial rights. Nevertheless, it was the prosecution's interest to persuade defendant to forgo these rights, and providing defendant with these choices was an inevitable and permissible " 'attribute of any legitimate system which tolerates and encourages the negotiation of pleas.' " (*Id*. at p. 364; see also *Corbitt v. New Jersey* (1978) 439 U.S. 212, 219-221.)

Appellant contends the reasoning and holding of *Collins* compel reversal of his conviction. We disagree. Our case is factually distinguishable from *People v. Collins*. The trial court in our case engaged in no negotiation with appellant, the sole purpose of which was to persuade, convince or coerce him into giving up his right to jury trial. Further, based on our review of the record, we find no element of coercion, let alone a "substantial danger of unintentional coercion" inherent in the trial court's discussion with appellant. Rather, this case involves the trial court approval of a sentencing arrangement between the prosecutor and appellant, and we believe it is governed by the principles set forth in *Bordenkircher v. Hayes* and *Corbitt v. New Jersey*.

Appellant argues that there is no evidence that appellant and the *prosecutor* entered into a plea agreement. Rather, his request was made directly to the court and the

trial court agreed to the proposed sentence in exchange for his waiver of jury trial. Appellant's interpretation of the record is too narrow. In fact, there is no evidence that the trial court had any discussions with appellant or the attorneys off the record concerning appellant's right to jury trial. There is no evidence in the record that the court unilaterally decided to offer appellant leniency in order to persuade appellant to give up his right to jury trial. The only indication in the record is that the court was fully prepared for jury trial and in fact had ruled on two motions in limine prior to appellant informing the court he wished to waive jury trial. It is clear from the record that appellant and the prosecutor agreed that the prosecutor would seek a sentence no greater than felony probation, with no jail time, and appellant agreed to give up his right to jury trial. Appellant was represented by defense counsel during these pre-trial proceedings, and certainly was free to accept or reject whatever choices or offers the prosecutor extended. The trial court did nothing more than accept the waiver of jury trial once that decision had been made by appellant.

We further disagree with appellant's argument that *Bordenkircher* and other plea bargain cases are distinguishable because appellant did not plead guilty, but chose to waive only his right to jury trial. Appellant's agreement with the prosecutor was in the nature of a plea bargain, since as a result of negotiations with the prosecutor, appellant voluntarily gave up fundamental constitutional trial rights in exchange for the prosecutor's agreement to seek a more lenient sentence than could be imposed upon a conviction. As in the plea bargain cases, we find no constitutional infirmity in this procedure. Appellant's waiver was intelligent, knowing and voluntary.

DISPOSITION

The judgment is affirmed.

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BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

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MIHARA, J.

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RUSHING, J.